THE HON'BLE SRI JUSTICE K.C. BHANU

WRIT PETITION NO.23889 OF 2002

DATED 03.08.2005

Between:

D. Saibabu, S/o. Late Gopala Krishna Murthy,

Aged 38 years, Senior Assistant,

Sri Veera Venkata Satyanarayana Swami Vari Devasthanam,

Annavaram, E.G. District.

….. PETITIONER.

AND

The Govt. of A.P., rep., by its Secretary,

Endowments Department,

Secretariat, Hyderabad & 3 others.

….. RESPONDENTS

ORAL ORDER:-

The writ petition is filed seeking a Mandamus to declare the action of the respondents 2 and 3 in awarding promotion in favour of the 4th respondent to the post of P.R.O. in the cadre of Superintendent vide proceedings Rc.No.A1/43578/2002, dated 23.09.2002, issued by the 2nd respondent and proceedings Rc.No.A1/4140/2002, dated 24.09.2002 issued by the 3rd respondent, as illegal and arbitrary.

The grievance of the petitioner is that he initially appointed as Record Assistant on 29.02.1998 in the 3rd respondent Institution, and thereafter, promoted to the post of Junior Assistant on 03.07.1990 and further promoted to the post of Senior Assistant on 05.05.1996 and as such, he has been continuing in the said capacity.

The petitioner submits that the respondents issued Provisional Seniority List wherein, the petitioner was figured at Sl.No.5 and the 4th respondent at Sl.No.7. The said seniority list was confirmed by the 3rd respondent. The petitioner stated that the Government issued latest amended rules vide G.O.Ms.No.888, dated 08.12.2000. As per Rule 13 of the said Government Order the only criteria prescribed for effecting promotions is on the basis of seniority. While the matter stood thus, the 2nd respondent vide proceedings Rc.No.A1/43578/2002, dated 23.09.2002 gave permission to the 4th respondent for promotion and the 3rd respondent accepted and issued the impugned order vide proceedings Rc.No.A1/4140/2002, dated 24.09.2002.

A detailed counter-affidavit has been filed by the 4th respondent denying all the allegations made in the affidavit and stating that the petitioner without availing the appeal remedy, rushed to this Court by filing the present writ petition. Therefore, the writ petition does not deserve any consideration.

Learned counsel for the petitioner contended that as per the seniority list issued by the respondents on 01.02.2000, the petitioner was figured at Sl.No.5 and he is having requisite qualifications for the promotion to the post of Superintendent, but the respondents denied the promotion to the petitioner and promoted the 4th respondent, who is figured at Sl.No.7, as Superintendent. Since the post of Superintendent is promotional post, the respondents 2 and 3 ought to have given the promotion to the writ petitioner as per the seniority list and hence, he prays to allow the writ petition.

On the other hand, the learned standing counsel appearing for respondents 1 and 2

contended that a separate cadre of Public Relation Officer (for short "PRO") was created by the Commissioner of Endowments and as the 4th respondent is having requisite qualifications for the post of PRO, he was given promotion and therefore, the impugned order does not suffer from any infirmities.

The learned counsel appearing for 4th respondent also pointed out the same thing, which is pointed out by the learned standing counsel for the respondents 1 and 2.

It is not in dispute before this Court that out of 11 sanctioned posts in the category of Superintendent, one post is created in addition to 11 posts in the cadre of Superintendent by the competent authority. There is no post of PRO, as such, in the rules governing the service conditions. So for all practical purpose even if PRO is to be appointed, the feeder category of the persons working in the Senior Assistant cadre has to be taken into consideration. It is not in dispute before this Court that seniority alone is the criteria for giving promotion to the cadre of Superintendent. Admittedly, it is not in dispute that the petitioner is senior compared to the 4th respondent, but by virtue of the proceedings of the 3rd respondent dated 24.09.2002, the 4th respondent was given promotion as a PRO. No doubt, according to the standing counsel for the respondents 1 and 2 and counsel for the 4th respondent that the Public Relation Officer should possess a degree in Public Relations, but that is not a requirement as per the statutory rules.

As per the statutory rules governing the service conditions for giving promotion to the post of Superintendent is only by way of seniority. Even the post created by the competent authority in the cadre of public relation officer is also equivalent for the cadre of Superintendent, therefore, the respondents have to necessarily follow the seniority in the cadre of Senior Assistants. Since, the rules have not been amended prescribing any additional qualification for the post of PRO, giving promotion to 4th respondent is contrary to service rules. At this point of time it is brought to the notice of this Court that the petitioner was also given promotion with effect from 09.05.2005. Since the 4th respondent is admittedly junior to the writ petitioner in the cadre of Senior Assistant, the same benefit would have been extended to the writ petitioner also. Therefore, it is not desirable to cancel or set aside the proceedings, dated

24.09.2002, issued in favour of the 4th respondent in giving promotion. Since the vacancy has been arisen, all the benefits, which were given to the 4th respondent in pursuance of his promotion, shall also be given to the writ petitioner, as he is senior.

In the circumstances, the writ petition is allowed and the respondents 1 and 2 are directed to extend all the monetary benefits to the petitioner duly taking his promotion with effect from the date on which the 4th respondent was promoted. The interim stay, dated 14.10.2004, granted by this Court is vacated. For further promotions the respondents shall follow the rules governing the service conditions. No order as to costs.

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03.08.2005

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